

HOUSE FINANCE COMMITTEE

May 18, 2021

1:34 p.m.

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CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 1:34 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative DeLena Johnson  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen  
Representative Steve Thompson  
Representative Adam Wool

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Representative Andy Josephson, Sponsor; Elise Sorum-Birk, Staff, Representative Andy Josephson; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Caroline Schultz, Policy Analyst, Office of Management and Budget, Office of the Governor; Representative Geran Tarr, Chair, House Fisheries Committee, Sponsor; Thatcher Brouwer, Staff, Representative Geran Tarr.

PRESENT VIA TELECONFERENCE

Mike Coons, Self, Palmer; Aaron Martin, United States Fish and Wildlife Service, Anchorage; Danielle Verna, Environmental Monitoring Program Manager, Prince William Sound Regional Citizens Advisory Council, Valdez; Doug Vincent-Lang, Commissioner, Department of Fish and Game; Laura Achee, Legislative Liaison, Department of Environmental Conservation.

## SUMMARY

### HB 54        INVASIVE SPECIES MANAGEMENT

HB 54 was HEARD and HELD in committee for further consideration.

### HB 57        FUNDS SUBJECT TO CBR SWEEP PROVISION

HB 57 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda.

#hb57

### HOUSE BILL NO. 57

"An Act relating to the budget reserve fund established under art. IX, sec. 17(d), Constitution of the State of Alaska; relating to money available for appropriation for purposes of applying art. IX, sec. 17, Constitution of the State of Alaska; and providing for an effective date."

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REPRESENTATIVE ANDY JOSEPHSON, SPONSOR, thanked the committee for hearing the bill. He shared that he had been a legislative staffer when the House had passed the amendment for the Constitutional Budget Reserve (CBR) in 1990. He opined that presently, the state likely would not create a CBR but acknowledged the creation had a lasting effect. He indicated that the CBR was a way to house funds more accessible than the corpus [of the Permanent Fund] but not readily accessible. He commented that a 30/15 vote was necessary to access the funds. He referenced the funds subject to the sweep that were fundamental to the CBR. He noted the dispute amongst legislators whether the CBR debt mattered since it was a debt to the legislature that did not bear interest. He specified that the funds subject to the sweep needed to be in the general fund and available for appropriation. The bill had originated from a situation in July 2019 [Special Session]. He delineated that several hearings took place in the Senate Finance Committee [post regular session] regarding what funds were subject to the sweep that involved the Legislative Finance Division (LFD),

Division of Audit, Office of Management and Budget, and the Department of Law (DOL). He mentioned the various views on what funds were subject to the sweep and cited a memo from the Attorney General (AG) at the time, Kevin Clarkson, [Attorney General, Department of Law, 2019- August 24, 2020] that included the Power Cost Equalization (PCE) as subject to the sweep. He provided context for the hearings; the Capital Budget was not yet adopted, the reverse sweep had not happened, and the state's largest operating budget vetoes had occurred. He felt that the legislature was unable to figure a way out of the "political or fiscal morass."

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Representative Josephson continued that there were roughly 180 different sub-accounts of the General Fund (GF), and the question became how many of the funds were sweepable. The incident prompted him to introduce HB 57. He referenced a PowerPoint presentation (copy on file) titled "HB 57" showing the CBR language. He elaborated that the initial attempt to define "what was available for appropriation" occurred in 1994 in the case Hickel v. Cowper [both former governors]. He shared that he and his staffer, Ms. Elise Sorum-Birk studied the case and used it as their guidepost for the legislation. He related that the case concluded that not all funds were sweepable; monies that had already been appropriated were available for appropriation, however revolving loan funds were typically not deemed eligible for appropriation and would be against statutory intent and trust doctrine to expend all of a rotating fund's monies therefore it was not all available for appropriation. He emphasized the complexity of the issue. He related that his key motivation was to avoid going through another situation like July 2019 again. He believed that the legislature should write a statute consistent with the 1994 state Supreme Court ruling.

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Representative Josephson reported that the bill attempted to resolve the issues. He exemplified the provision in HB 57 that stated PCE was nominally held in the Alaska Energy Authority (AEA) and not subject to appropriation. He relayed that he frequently had discussions with Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Megan Wallace, Director, Legislative Legal Services,

Alaska State Legislature; and Alexei Painter, Director, Legislative Finance Division when working on the legislation. Representative Josephson concluded that the Supreme Court had ruled that some items were sweepable and some were not.

Co-Chair Merrick noted that Representative Wool had joined the meeting.

ELISE SORUM-BIRK, STAFF, REPRESENTATIVE ANDY JOSEPHSON, presented the PowerPoint presentation and began with a brief sectional analysis of the bill on slide 1 titled "Sectional Analysis:"

Section 1 - Uncodified language- legislative intent and findings

Section 2 - Defines "available for appropriation."

Section 3 - Codifies the principle that funds found within the general fund that do not require further appropriation (or must be held separately by law) are not subject to the sweep. Lists funds that meet these requirements.

Section 4 - Defines "general fund."

Section 5 - Effective Date - June 30, 2021

Ms. Sorum-Birk elaborated that Section 1 was an analysis of the Hickel v. Cowper court case. She described Section 1 as a lengthy analysis of legislative findings and intent. She revealed that although abnormal, a clear record of why the bill was drafted in the manner chosen was important to establish. She highlighted that Section 2 repealed and reenacted AS 37.10.420 (a). The section contained the statutory definition for "available for appropriation," and to align with the principles outlined in Hickel v Cowper, where the Supreme Court ruled that the initial legislative attempt was unconstitutional. She elaborated that Section 3 added language to AS 37.10.420 (b) and added that the list of GF was non-inclusive. She commented that Section 4 created a new section, AS 37.10.420(c), that defined "general fund" and outlined fund types explicitly not considered to be part of the general fund. She noted that Section 5 provided an effective date of Jun 30, 2021, to

ensure that the legislation would be in effect prior to the FY 2021 CBR sweep occurring.

Co-Chair Merrick noted that Representative Carpenter had joined the meeting.

Ms. Sorum-Birk turned to slide 3 and addressed the CBR repayment provision:

Article IX, Section 17(d)- "If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law."

Ms. Sorum-Birk pointed out that an item had to meet two criteria: it had to be in the general fund and available for appropriation. She noted the emphasis on the last sentence stating the "legislature shall implement this subsection by law." Even though, the legislature attempted to do so in 1994, the law was found unconstitutional.

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Ms. Sorum-Birk turned to slide 4 titled "Legislative Intent 1:"

"It is the intent of the legislature to create statutory definitions for these terms in alignment with both the current legal understanding of them and the reality of existing state fiscal systems."

- O A lack of clarity in statutes surrounding the mechanics of the sweep provision

- O Potential adverse impacts on the availability of important fund sources

- O July 2019 events

- O Need consistent meaning of terms "general fund" and "available for appropriation"

Ms. Sorum-Birk referred to Representative Josephson's testimony describing the events of July 2019 and offered that the event illustrated the need for more clarity in the law on the matter. She shared the concern that without statutory definitions the sweep became a matter of administrative policy. She turned to Slide 5 titled "Legislative Intent 2:"

It is the intent of the legislature to update the section of statute defining "available for appropriation" to specifically reflect the findings set forth in Hickel."

The Alaska Supreme Court's analysis in the Hickel v. Cowper decision provides a framework

A legislative obligation exists to implement by law Article 9 Section 17(d) of the constitution

1994 passage of House Bill 58 (AS 37.10.420) aimed to do this but was found to be broadly unconstitutional

Supreme Court outlined general standard and invited a reexamination of this statute

"We also make no attempt to name and classify as "available" or "unavailable" every fund within the treasury of the State of Alaska. We leave it, in the first instance, to executive and legislative branch officials more familiar with all of the funds involved to apply the general definition we adopt today." (Hickel v Cowper, 874 P. 2d 922, n. 27)

Legislative Audit Finding No. 2019-089 of the State of Alaska FY 2019 Single Audit

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Ms. Sorum-Birk offered that the court outlined the principles and provided a broad framework but left it to the policy makers to implement its views. She noted that in the ensuing years no legal remedy had been pursued.

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Ms. Sorum-Birk reviewed on slide 6 titled "Legislative Intent 3:"

"It is the intent of the legislature to protect the financial security of existing programs and maintain the integrity of state financial structures to the greatest extent possible"

The Hickel ruling voiced clear opposition to disrupting the mechanics of state finance; advocated commonsense approach

Legislature's view too narrow, Cowper's view too broad

Revolving Loan Funds- "...the existing state programs dependent on these funds would have to be curtailed if these funds were expended on another purpose. These funds are maintained, however, because in the judgment of the legislature they serve worthwhile purposes."  
(Hickel, 874 P. 2d at 929)

Ms. Sorum-Birk reviewed slide 7 titled "Legislative Intent 4:"

"The legislature finds that appropriated funds which can be expended with no further legislative action are no longer considered available for appropriation and thus would not be included in the sweep... It is the intent of the legislature to include this principle in the codified definition of 'available for appropriation.'"

O True regardless of if the funds were given to a state agency to spend or were held in the general fund

O Hickel - Article 17 did not require "counting funds already validly appropriated to a specific purpose as still 'available'" and that monies already "validly committed by the legislature to some purpose should not be counted as available."  
(Hickel, 874 P. 2d at 930-931)

Ms. Sorum-Birk added to the first bullet point on the slide. She furthered that if a pot of money is fully

obligated or if the legislature has relinquished its power of appropriation over a fund, then it is not subject to the sweep.

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Ms. Sorum-Birk moved to slide 8 titled "Legislative Intent 5:"

"The legislature finds that any funds that cannot be immediately expended through appropriation are not considered available for appropriation and thus are not subject to the sweep ... It is the intent of the legislature to include this principle in the codified definition of 'available for appropriation.' "

The Hickel Court held that the voters, in supporting passage of the CBR resolution in 1990, were not trying to eliminate state services or liquidate state assets before funds in the CBR could be accessed (Hickel, 874 P. 2d at 928).

Categories of funds that are not immediately spendable include:

- o illiquid assets
- o revolving loan funds
- o grants to the state from private entities

Ms. Sorum-Birk commented that the intent was related to Governor Cowper's argument that all funds were considered sweepable.

Ms. Sorum-Birk highlighted Slide 9 titled "Legislative Intent 6:"

"The legislature finds that funds considered to be trust receipts, despite being included in the metric for calculating what is available, are to be excluded from the sweep... It is the intent of the legislature to include this principle in the codified definition of 'available for appropriation' and to clarify in statute the principle that trust receipts are not fully subject to the sweep provision."

If actually appropriated must be included in "available for appropriation"



Only a portion is available according to Hickel - the part that would be expended consistent with application of prudent "trust principles"

Ms. Sorum-Birk observed that the court ruling employed the phrase "trust receipts" multiple times but the term was meaningless in relation to audits. She noted that in the ruling footnotes 22 and 23 outlined that trust principles were the key component of what funds were sweepable. Trust receipts included federal funds, funds given to the state for specific purposes from private entities, and appropriations from trust accounts. She read from footnote 23 "Amounts appropriated by the legislature out of other funds with an executive agency for the purposes of administering these funds under explicit statutory authority may also be treated as a type of trust receipt."

Vice-Chair Ortiz asked about the category of trust receipts and the historic way the sweep had been handled. He asked about the impact once trust receipts were removed from the sweep and if it would result in a reduction in sweepable funds. Ms. Sorum-Birk answered that the majority of trust receipts were already considered not sweepable. She deferred to the legislative auditor to provide details on what were currently considered trust receipts.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, answered that trust receipts was not an accounting term. She elaborated that the term "Trust Funds" was commonly used and was explicitly defined in statute and had a different meaning than the use of trust receipts. She had heard federal funds were considered trust receipts. She had never encountered trust receipts used in accounting terms.

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Vice-Chair Ortiz asked about the fiscal impact of trust receipts if the bill was adopted. Representative Josephson replied that it was necessary to look at July 2019 when the last sweep occurred. He did not recall whether OMB included trust receipts in the sweep.

Ms. Sorum-Birk examined Slide 9 titled "Legislative Intent 7:"

O "The Hickel Court treated money appropriated by state corporations much the same way as trust receipts..."

O Alaska Energy Authority is a state corporation that holds the Power Cost Equalization (PCE) endowment fund. The PCE is not subject to sweep or part of the general fund for 4 reasons-

- 1) This fund is housed in a corporation
- 2) PCE follows an endowment model which requires application of prudent "trust principles"
- 3) Hickel says that only the money appropriated from a corporation must be counted as available for appropriation, even if a corporation had funds in excess of what it required to fulfill its purpose
- 4) The legislature has never fully appropriated the funds and it is unlikely that it would do so, as that would defy the very purpose of the fund

Ms. Sorum-Birk elaborated that the slide was related to footnote 23 in the court case. The case considered that money appropriated from Alaska Industrial Development and Export Authority (AIDEA) and Alaska Housing Finance Corporation (AHFC) counted as available for appropriation but only the amount appropriated.

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Ms. Sorum-Birk spoke to Slide 10 titled "legislative intent 8:"

O "The legislature finds that the earnings reserve account, as an account in the Alaska permanent fund, is located outside of the general fund and thus is not subject to the sweep provision... It is the intent of the legislature to codify fund types that exist in the state treasury separately from the general fund to eliminate all uncertainty as to what constitutes the general fund."

O Hickel- "the earnings reserve account, need not be deposited into the budget reserve." (Hickel, 874 P. 2d 922, 23)

Ms. Sorum-Birk illustrated that if the logic of former Attorney General Clarkson had been followed, funds similar in use to GF would make the funds GF. Therefore, if something could be appropriated by the legislature it would count as GF, which was a cause of concern.

Representative Josephson interjected that in *Hickel v Cowper* there was no other use of the ERA except for inflation proofing and paying Permanent Fund dividends (PFD). In relation to former AG Clarkson's interpretation, it left open the possibility that constitutionally the Earnings Reserve Account (ERA) could be sweepable although statutorily, it is not.

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Ms. Sorum-Birk examine Slide 11 titled "legislative intent number 9:"

"It is the intent of the legislature to define 'general fund' in a way that is practical, logical, and stabilizing in nature."

- O No statutory or constitutional definition for the term "general fund" exists

- O Occurs 200+ times throughout statute

- O Lack of consistency between organizations - currently a matter of policy rather than law

- O It is common practice in other states to define 'general fund'

Ms. Sorum-Birk addressed Slide 12 titled "What is the General Fund:"

- ☐ There isn't consensus between state agencies

- ☐ In budgeting terms, we are used to thinking in terms of UGF, DGF, Federal and Other

- ☐ These categories don't align with the accounts in the state treasury

- ☐ The CAFR says

□ "All public monies and revenues coming into the state treasury not specifically authorized by statute to be placed in a special fund constitute the General Fund"

□ But also notes - "Not all revenues that flow into the General Fund are available to pay for unrestricted government activities. The most notable are federal revenues, which are provided for specific purposes."

□ It is common practice in public finance to define general fund

Ms. Sorum-Birk reported that the bill adopted a broad definition that spoke to how GF existed as an account in the state treasury.

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Ms. Sorum-Birk turned to Slide 13 titled "definition of the general fund:"

The primary operating fund of the state, consisting of all money paid into the state treasury that is not specifically authorized by law to be placed in a separate fund

Excludes:

Funds held or managed by legally separate entities that the state is financially accountable for including funds held or managed by public corporations and the University of Alaska

- enterprise funds
- debt service funds
- special revenue funds
- the Alaska permanent fund
- internal service funds
- agency funds

Ms. Sorum-Birk indicated that the definition was adapted from the Comprehensive Annual Financial Report (CAFR) definition. The slide noted the items not included in the definition.

Ms. Sorum-Birk highlighted Slide 14 titled "Summary of principles from Hickel v Cowper used in defining "available for appropriation"

- Two main parameters:
- "must include all funds over which the legislature has retained power to appropriate" and
- "which are not available to pay expenditures without further legislative appropriation"
- For trust receipts the amount appropriated by the legislature IS the amount available for appropriation
- This category includes federal funds, funds given to the state for specific purposes by private entities AND appropriations from trust account
- Notably "amounts appropriated by the legislature out of other funds within executive agencies for the purpose of administering these funds, under explicit statutory authority may also be treated as a type of trust receipt" (revolving loan funds)
- Monies of public corporations are treated similarly to trust receipts
- Excludes illiquid assets, funds expendable without further legislative appropriation, or funds validly appropriated

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Ms. Sorum-Birk reviewed Slide 16 titled goal in summary on slide 15.

HB 57 aims to enact by law section Article IX, Section 17 (d) of the Alaska Constitution thereby providing legal clarity on the sweep provision.

It does this by:

- defining 'available for appropriation' using an understanding of parameters set in Hickel v Cowper and thereby correcting the largely unconstitutional AS 37.10.420 (a)(1)

- defining 'general fund' in a way that reflects the actual mechanics of state finance and clarifying what fund types are excluded from the general fund

- formally addressing which funds within the general fund cannot be swept and why

Ms. Sorum-Birk reminded the committee that resolving the issue was a "constitutional obligation" since 1994. She warned of the need for a unified understanding and codification of principles. She cautioned against leaving it up to a matter of administrative policy.

Representative Josephson remarked that he had been involved in the uncodified language, which was unique when drafting the bill. He emphasized that courts want to consider what the intent of the law was, and inclusion of the uncodified language was a way to establish the intent to follow the guidance rendered from the Hickel v. Cowper decision. He mentioned that there were a number of accounts created by the legislature, but the court had specified that the Spill Prevention and Response Fund (SPAR) was not sweepable because of the unpredictable nature of a spill and the emergency response necessary to clean it up. He pointed out that a number of other funds were similar in that they were set up to be self-sustaining. The judgment suggested those type of funds was also not sweepable. He felt that the legislature had the advantage of using Hickel v. Cowper as a "roadmap to create statute." He stressed that the bill should not move from committee at present but emphasized that it should in 2022 and was the obligation of the legislature.

Vice-Chair Ortiz cited a document titled "Funds Subject to CBR Sweep--FY17-FY19," dated July 18, 2019, by the Legislative Finance Division (copy on file). He interpreted that only the funds marked by a green "Y" were sweepable under HB 57. Representative Josephson deferred to Ms. Sorum-Birk for the answer.

Ms. Sorum-Birk replied that the document was created for the meetings in FY 19 and depicted the disagreement among the agencies regarding what items were sweepable or not. She noted that the funds in green had unanimous agreement that the funds were sweepable. She pointed to the three columns located in the center of the document reflecting

each fiscal year and noted that they portrayed consistency in agreement over whether certain funds were sweepable or not. She cited notation in the far right column "Not a fund based on review of IRIS for FY 19." She indicated that many items on the list were receipts and not funds. She clarified that the item had to be a fund to be included in the calculus as to whether something was sweepable.

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Vice-Chair Ortiz asked if it was the intent of the chart was to communicate that there was a consensus that the items in green were sweepable. He asked if it was the intent to define funds that were sweepable. Ms. Sorum-Birk answered in the negative and added that the items had been added by the Legislative Finance Division.

Co-Chair Merrick OPENED public testimony.

MIKE COONS, SELF, PALMER (via teleconference), opposed the bill. He believed that the bill would violate the state constitution. He pointed to page 8, lines 5 through 7 and read "Funds established within the general fund that by law require no further appropriation before expenditure or are required to be held separately by law are not subject to art. IX, sec. 17(d), Constitution of the State of Alaska." He stated that it was not possible to create a statute to "get around the constitution." He emphasized that like the CBR, the use of the so called sweep requires the same three quarter vote as does the CBR. He thought that the bill was an opportunity to clear up the issue to allow the legislature to spend more. He expressed outrage regarding an attack on the constitution.

Co-Chair Merrick CLOSED public testimony.

Co-Chair Merrick asked to hear a review of the fiscal note.

CAROLINE SCHULTZ, POLICY ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, referenced the Statement of Zero Fiscal Impact by the Office of Management and Budget. She explained that implementation of the legislation would not require additional funding.

HB 57 was HEARD and HELD in committee for further consideration.

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#hb54

HOUSE BILL NO. 54

"An Act establishing the Alaska Invasive Species Council in the Department of Fish and Game; relating to management of invasive species; relating to invasive species management decals; and providing for an effective date."

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REPRESENTATIVE GERAN TARR, CHAIR, HOUSE FISHERIES COMMITTEE, SPONSOR, shared the history of the legislation. She indicated that former Representative Paul Seaton had requested she take over working on a bill addressing an emergency response to the invasive species Elodea. She explained that the spread was so aggressive it advanced to a much costlier problem by the time permits necessary to address the problem were issued. She worked in collaboration with the Alaska Invasive Species Partnership and discovered a more comprehensive model of addressing the problem. She explained that the model would employ bringing together all the stakeholders involved in the issue. She exemplified the Zebra Mussel problem in Michigan where the mussels multiplied so rapidly, they clogged a main water pipe and shutdown municipalities' water systems. She spoke to the advantages of collaboration between government and private entities to address the invasive species issues. She noted the different industries that could act as vectors of introduction of invasive species i.e., the oil and gas industry, construction, and shipping industry. She exemplified that the Department of Transportation and Public Facilities (DOT) in acknowledgement of the invasive species problem, revegetated any fill projects with native vegetation. She noted the broad interest in bringing the comprehensive model to Alaska. Currently, the state spent a few million dollars in invasive species management while other states spent up to hundreds of millions of dollars to address the issue.

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Rep. Tarr continued that invasive species problems became large and costly. The advantage to get ahead on the prevention side was the likelihood of mitigation costing much less, which the collaborative model could accomplish. She related that the bill was vetted at a meeting of the Alaska Invasive Species Partnership that provided input from all over the state. She offered that HB 54 created the Alaska Invasive Species Council and defined the issues they could address. The idea was to get the multi-stakeholder group together, which was the most effective use of resources. She noted that the collaborative and prevention work would effectively address larger threats looming in the future. She delineated that the bill established a response fund and for the sale of invasive species management decals. She had explored many ideas for funding but currently the sale of decals was chosen to avoid starting out with a mandate. She shared that former Senator Gary Wilken had come up with the idea of a decal and noted the general enthusiasm people had towards the issue with the hope of generating decal sales. She relayed that the bill was a House Fisheries Committee bill and the members wanted to find alternative funding for the \$28 thousand fiscal note related to the council other than suing undesignated general funds (UGF).

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Representative Tarr communicated the intent language in the bill on Section 1, page 1, lines 7 through 10 as follows:

LEGISLATIVE INTENT. It is the intent of the legislature that the Department of Fish and Game support the activities of the Alaska Invasive Species Council, established by this Act, through contributions, grants, and other forms of funding that do not involve the use of money from the state's general fund.

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THATCHER BROUWER, STAFF, REPRESENTATIVE GERAN TARR, reviewed the sectional analysis (copy on file):

Section 1: Adds a new section to uncodified law that states it is the intent of the legislature that the Department of Fish and Game does not use money from the state's general fund to support the Alaska

Invasive Species Council, and instead finds other sources of funding to support the council.

Section Two: AS 16.20.800 establishes the invasive species management decals. The decals will be produced by the Department of Fish and Game annually and made available for sale to the public for a \$20 fee. The department will work in conjunction with the Alaska Invasive Species Council described in Sec. 16.20.810 to design and produce the decals. The legislature may then appropriate the proceeds from the sale of the decals to further produce the decals or to the invasive species response fund described in Sec. 16.20.820, to carry out the work of invasive species response.

Section 16.20.810 establishes the Alaska Invasive Species Council in the Department of Fish and Game. The council will be comprised of representatives from the Departments of Fish and Game, Natural Resources, Environmental Conservation and Transportation and Public Facilities.

Furthermore, the council will have members from stakeholder organizations and industries appointed by the governor to three-year terms, as well as representatives from federal agencies that deal with invasive species.

Additionally, Section 16.20.810 outlines the responsibilities of the council. This section requires that the council be responsible for facilitating cooperation between state, federal, tribal, local agencies, and nongovernmental organizations in the management invasive species. The council will be tasked with recommending coordinated interagency strategies and policies related to the management of invasive species. The council will also provide guidance on how to prioritize the response to invasive species and how to best use funds from the invasive species response fund.

Lastly, the council will be responsible for selecting designers of the invasive species control decals and approving and promoting the designs.

Furthermore, Section 16.20.810 provides guidance on council meetings and deliverables. The council will meet at least once a year, and by January 15th of each odd-numbered year, the council shall produce a plan that addresses the economic impact of invasive species and recommends legislation and funding to implement the council's priorities.

Section 16.20.820 establishes an invasive species response fund in the general fund and allows the department to use the funds to prevent, control, or eradicate invasive species.

Section 16.20.850 defines commissioner, council, department, invasive species, management of invasive species and non-native species.

Section Three: Section 37.05.146 adds the invasive species decal fee to the list of separately accounted program receipts.

Section 4: Gives direction to the governor regarding the appointment of the members, chair, as well as timing and number of meetings in the initial year.

Section 5: Establishes an immediate effective date.

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Representative Josephson asked Representative Tarr for more detail about the large meeting she had mentioned. Representative Tarr responded that the Alaska Invasive Species Partnership was a nonprofit organization that met annually, and she had attended the annual meeting. She elucidated that the members of the partnership wanted the creation of the council to use the work of the experts in the partnership to help develop state policy.

Representative LeBon stated that the House had passed the enhanced sport fishing license [HB 79 Saltwater Sportfishing Operators/Guides] to help fund invasive species eradication. He asked how to connect the funding source to the legislation before the committee. Representative Tarr answered that Representative Sarah Vance had introduced an amendment that part of the fee increase could be used for invasive species management and was hoping for complete passage of the bill. In addition,

the Commissioner of the Department of Fish and Game Doug Vincent-Lang, revealed that some grant funding would be available.

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Representative Wool thought that the decal program sounded interesting and at \$20 a decal it could raise substantial funding. He asked for details regarding the decal and how much funding was anticipated from the sales.

Representative Tarr relayed that the commissioner thought the fiscal note could be corrected downward. She cited the fiscal note analysis that stated "...to develop an invasive species management decal with the council and offer them for sale to the public for \$20 each. The department estimates to collect \$3.9 annually..." She referenced the Fish and Game website that had numerous items available for purchase online. She listed other potential efforts to promote the decal and remarked that the fiscal note estimate was low. She mentioned the possibility of the council creating a decal design contest. Representative Wool suggested selling the decals at fishery supply stores.

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Vice-Chair Ortiz cited facts from the sponsor statement, "Invasive species are costing Alaska money (Almost \$6 million a year to manage according to a 2012 ISER study)" and "It was estimated in 2005 that invasive species cost the United States \$120 billion in damages every year according to a US Fish and Wildlife Fact Sheet on the Cost of Invasive Species." He asked how the problem had evolved since 2012 and whether the issue created more of a water problem rather than land problem. Representative Tarr replied that some of the studies were not more recent than 2012. She referenced the document titled "Managing Invasive Species: How Much Do We Spend?" included in the members packets. She delineated that the paper was written by University of Alaska researchers who discovered that the impacts to salmon could be hundreds of millions of dollars. She referenced the huge cost of zebra mussel mitigation. The cost of impacts to hydroelectric facilities and municipal water supplies were astronomical. She mentioned some examples of how invasive species were introduced and spread particularly with Elodea. She expounded that it depended on the species as to the type of impact. She

reported that Tammy Davis [Invasive Species Coordinator, Department of Fish and Game] had testified about the work DFG was doing to mitigate invasive species.

Co-Chair Merrick asked if there was any liability in the case mentioned about an individual dumping an aquarium causing an outbreak. Representative Tarr answered in the negative. She referenced a case noted in information provided by Ms. Davis in the form of a PowerPoint titled "Department of Fish and Game Invasive Species Program Report: 2021" on slide 13 and read "In 2019, 144 rainbow trout were illegally imported from a hatchery in Oregon and then illegally released into a closed lake on the Kenai Peninsula." She indicated that the responsible individual was identified and fined, but that was an exceptional situation.

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Representative Thompson shared that he was aware of invasive species mitigation work for years. He spoke to how invasive species spread in the interior. The Harding Lake Association was trying to raise its own funds to eradicate Elodea. He asked how the funds from the sale of the decals would be distributed. Representative Tarr answered that the council would develop a strategic plan and help the state prioritize the funding. She expected that some of the funds would come back to Harding Lake since Elodea spread was rapid.

Co-Chair Merrick moved to invited testimony.

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AARON MARTIN, UNITED STATES FISH AND WILDLIFE SERVICE, ANCHORAGE (via teleconference), relayed that he worked in the regional office in Anchorage and was asked to speak to the technical aspects of invasive species projects the service was involved in. He elaborated that the United States Fish and Wildlife Service (USFWS) worked on all types of invasive species on land and water. The agency's main task was to prevent the introduction of invasive species in the U.S. The service was working with state and federal partners to identify what species may arrive in Alaska, were already here, and work on prevention. The agency worked with ADFG, Alaska Invasive Species Partnership, and the Department of Natural Resources (DNR).

Mr. Martin emphasized that prevention was the key to success in invasive species management. He reported that Alaska had relatively few invasive species compared to other states. He listed some species: Elodea, Northern Pike, and a suite of terrestrial invasive plants that varied in impacts. He voiced that the more collaborative and community based the effort was the more likely invasive species could be managed and kept in small outbreaks. He noted that one project was focused on preventing Zebra Mussels from arriving in the state on the ALCAN Highway. He shared that USFWS had conducted a pilot project to understand the level of risk from watercraft being towed to Alaska. He reported that 70 percent of the vessels arriving via highway was not being inspected by a large network of watercraft inspections stations across the west, and 38 percent of the boats had come from states with infected waters. He noted the discovery of a sailboat encrusted with zebra mussels that arrived in Alaska in 2019 that luckily had not become a threat. The service worked with Canadian watercraft inspection agencies, state Fish and Game agencies, and Customs and Border protection to set up an inspection project on the Alcan that discovered a jet ski that had been test driven on Lake Powell infested with zebra mussels. He remarked that the detection infrastructure was available but needed to expand. He emphasized that much more collaboration and inspection infrastructure was warranted. He related a recent incident in Alaska where moth balls were quarantined because they carried zebra mussels on them.

[2:49:34 PM](#)

Mr. Martin continued that the incident underlined the threat and need for collaboration. He pointed to Dutch Harbor being an international shipping platform for Alaska in addition to its rank as the top US commercial fishing port by volume and a major hub for barges from international waters. He noted that some of the barges came from the most infested bays and waterways in the world like Southeastern Asia, Central and South America, Port of Vancouver, Port of Tacoma, and San Francisco Bay. The infrastructure and coordination were currently lacking to offer a rigorous detection and rapid response program. He emphasized that the key to success was coordination and partnerships.

[2:51:27 PM](#)

Co-Chair Merrick OPENED public testimony.

DANIELLE VERNA, ENVIRONMENTAL MONITORING PROGRAM MANAGER, PRINCE WILLIAM SOUND REGIONAL CITIZENS ADVISORY COUNCIL, VALDEZ (via teleconference), testified in support of the legislation. She reported that the Prince William Sound Regional Citizens Advisory Council (PWSRAC) was an independent nonprofit corporation that promoted the environmentally-safe operation of the Valdez Marine Terminal and associated tankers. The 18 member organizations were comprised of the communities affected by the Exxon Valdez oil spill, as well as fishing, aquaculture, Alaska Native, tourism, and environmental groups. She delineated that the council recognized the significant threat invasive species pose to the environmental and economic health of the state. Creation of the Alaska Invasive Species Council was an important step towards collaboratively addressing invasive species prevention and management and recognized that the continually evolving threat of invasive species required resources for a rapid response. The council supported the development of a 5-year plan and establishment of a funding mechanism. She applauded the bill for including the need for both prevention and response for marine and freshwater environments. She detailed that commercial shipping was a potential vector for invasive species from ballast water. The tankers arriving in Prince William Sound deliver roughly 90 percent (11 million metric tons) of all the ballast water in the state sourced from highly invaded port systems on the U. S. West Coast. The council had long advocated for effective policies, sampling, and monitoring to prevent introductions.

[2:55:03 PM](#)

Co-Chair Merrick CLOSED public testimony.

Co-Chair Merrick asked for a review of the fiscal notes. She noted the published fiscal note from DFG [FN 2 (DFG)].

DOUG VINCENT-LANG, COMMISSIONER, DEPARTMENT OF FISH AND GAME (via teleconference), shared that invasive species was a continual challenge for the department due to increasingly more vectors and threats of invasive species. He initially worked with the sponsor on the bill because of its focus on granting more regulatory authority for the department rather than forming a strategy on how to deal

with the issue. Currently, the department was supportive of the bill and the creation of a council to help determine what regulatory aspects were necessary to address the issues. The department did not believe UGF was necessary to fund the work of the council. He noted the availability of grants through the USFWS and other entities to support the council.

Co-Chair Merrick stated that the other published fiscal note was for the Department of Environmental Conservation (DEC) [FN 1 (DEC)].

2:57:38 PM

LAURA ACHEE, LEGISLATIVE LIAISON, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (via teleconference), relayed that the department's fiscal note was zero. She added that the council included a seat for the Commissioner of the Department of Environmental Conservation (DEC), but she did not expect the participation to have a material impact.

Vice-Chair Ortiz asked if the DEC currently played an active role in the eradication of invasive species. Ms. Achee answered in the affirmative. She elaborated that the department's involvement included approving permits for pesticides to help eradicate Elodea and a certain species of fish. The department had developed a general permit that would speed up the process and allowed for rapid response when the situation fell within defined parameters where the risk and other considerations would be well-known.

2:59:31 PM

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RECONVENED

Representative Carpenter asked about response and prevention of invasive species. He asked if the department could manage invasive species in the current budget. Commissioner Vincent-Lang answered that the department was looking to convene the council to develop a common strategy to determine what may be needed to address the issue and in terms of regulatory oversight. Currently, DFG was dealing with invasive species on a case by case basis. He wanted the development of a comprehensive strategy that included state and federal agencies to help tackle the problem.



Representative Carpenter inquired if the legislature directed the department to develop its own strategy for dealing with invasive species whether the department had the ability to create a strategy without a council. Commissioner Vincent-Lang replied that it would mean the need to convene a group like the council to create a collaborative approach due to the necessary involvement of various departments and federal agencies.

[3:02:44 PM](#)

Representative Carpenter asked if the council would be necessary in perpetuity or whether the need was temporary. Commissioner Vincent-Lang answered that he saw the council working for a couple of years to develop the recommendations and he viewed that it would not need to be permanent. He added that the council would publish a report that included recommendations.

Representative Tarr provided closing remarks. She addressed the questions by Representative Carpenter. She noted that the previous committee had discussed the need for a sunset date. She anticipated that the point to reevaluate the council's ongoing role would be after the strategic plan was published. She favored the status of the bill as it felt premature to put an end date on the council at present. She was supportive of a sunset but did not want to act hastily.

[3:05:09 PM](#)

Representative Carpenter believed that something was needed to be done to address invasive species; however, he was cautious about creating another bureaucracy. He was hesitant to support the bill without a sunset or backstop to creating more government. He wanted to offer an amendment of some sort.

Co-Chair Merrick set a noon deadline for amendments the following day.

HB 54 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

3:06:43 PM

The meeting was adjourned at 3:06 p.m.